

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35538

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| STATE OF IDAHO, |) | 2009 Unpublished Opinion No. 501 |
| |) | |
| Plaintiff-Respondent, |) | Filed: June 17, 2009 |
| |) | |
| v. |) | Stephen W. Kenyon, Clerk |
| |) | |
| ZACHARY EUGENE THARP, |) | THIS IS AN UNPUBLISHED |
| |) | OPINION AND SHALL NOT |
| Defendant-Appellant. |) | BE CITED AS AUTHORITY |
| |) | |

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, PERRY, Judge
and GUTIERREZ, Judge

PER CURIAM

Zachary Eugene Tharp was charged with attempted grand theft by extortion, robbery, kidnapping and aggravated assault and pursuant to a plea agreement, pled guilty to attempted grand theft by extortion, I.C. §§ 18-2403(2)(e), 18-2407(1)(a), 18-306, and the state agreed to dismiss the other charges and to recommend retained jurisdiction. The district court sentenced Tharp to a unified sentence of seven years, with two years determinate and retained jurisdiction. After Tharp completed his rider, the district court suspended Tharp's sentence and placed him on probation for seven years. Tharp filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Tharp appealed from that denial. Tharp subsequently violated the terms of his probation and the district court revoked Tharp's probation and ordered

the underlying sentence into execution. Tharp filed a second Rule 35 motion for reduction of sentence. Tharp appeals, contending that the district court abused its discretion by revoking his probation and ordering the underlying sentence into execution without reduction.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon only the facts existing when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *State v. Chacon*, 146 Idaho 520, 524-25, 198 P.3d 749, 753-54 (Ct. App. 2008).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in failing to reduce the sentence *sua sponte*. Therefore, the order revoking probation and directing execution of Tharp's previously suspended sentence is affirmed.